§ 1201.128 of this part, stating with particularity any alleged violations of law or regulation, along with the supporting facts.

(b) If the Special Counsel files a corrective action with the Board on behalf of an employee, former employee, or applicant for employment who has sought corrective action from the Board directly under 5 U.S.C. 1214(a)(3), the Special Counsel must provide evidence that the employee, former employee, or applicant has consented to the Special Counsel's seeking corrective action. 5 U.S.C. 1214(a)(4).

(c) The judge to whom the complaint is assigned may order the Special Counsel and the respondent agency to file briefs, memoranda, or both in any corrective action complaint the Special Counsel brings before the Board.

§ 1201.130 Rights; answer to complaint.

(a) *Rights.* (1) A person on whose behalf the Special Counsel brings a corrective action has a right to request intervention in the proceeding in accordance with the regulations in § 1201.34 of this part. The Clerk of the Board shall notify each such person of this right.

(2) When the Special Counsel files a complaint seeking corrective action, the judge to whom the complaint is assigned shall provide an opportunity for oral or written comments by the Special Counsel, the agency involved, and the Office of Personnel Management. 5 U.S.C. 1214(b)(3)(A).

(3) The judge to whom the complaint is assigned shall provide a person alleged to have been the subject of any prohibited personnel practice alleged in the complaint the opportunity to make written comments, regardless of whether that person has requested and been granted intervenor status. 5 U.S.C. 1214(b)(3)(B).

(b) *Filing and default.* An agency named as respondent in a Special Counsel corrective action complaint may file an answer with the judge to whom the complaint is assigned within 35 days of the date of service of the complaint. If the agency fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the judge's decision.

(c) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent agency has no knowledge of a fact, it must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

§ 1201.131 Judge.

(a) The Board will assign a corrective action complaint brought by the Special Counsel under this subpart to a judge, as defined at § 1201.4(a) of this part, for hearing.

(b) The judge will issue an initial decision on the complaint pursuant to 5 U.S.C. 557. The applicable provisions of §§ 1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the jurisdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

[62 FR 48451, Sept. 16, 1997, as amended at 62 FR 66815, Dec. 22, 1997]

§ 1201.132 Final decisions.

(a) In any Special Counsel complaint seeking corrective action based on an allegation that a prohibited personnel practice has been committed, the judge, or the Board on petition for review, may order appropriate corrective action. 5 U.S.C. 1214(b)(4)(A).

(b)(1) Subject to the provisions of paragraph (b)(2) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302(b)(8), the judge, or the Board on petition for review, will order appropriate corrective action if the Special Counsel demonstrates that a disclosure described under 5 U.S.C. 2302(b)(8) was a contributing factor in the personnel action that was taken or will be taken against the individual.

(2) Corrective action under paragraph (b)(1) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel